

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DARRELL GOSTON,

Plaintiff,

v.

**9:08-CV-478
(FJS/ATB)**

RICHARD POTTER,

Defendant.

APPEARANCES

OF COUNSEL

**DARRELL GOSTON
01-B-0166**

Lakeview Shock Incarceration
Correctional Facility
P.O. Box T
Brocton, New York 14716
Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol
Albany, New York 12224
Attorneys for Defendant

C. HARRIS DAGUE, AAG

SCULLIN, Senior Judge

ORDER

Currently before the Court is Magistrate Judge Baxter's September 21, 2010 Order and Report-Recommendation, in which he denied Plaintiff's letter-motion to "substitute" David Rock as a defendant, recommended that this Court deny Plaintiff's letter-motion to amend his amended complaint to add Lieutenant Sawyer and a "John Doe" Deputy Superintendent, and recommended that this Court *sua sponte* dismiss Plaintiff's amended complaint in its entirety with prejudice for

failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). *See* Dkt. No. 51 at 18-19. The parties have not filed any objections to these recommendations.¹

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Baxter's September 21, 2010 Order and Report-Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Baxter's September 21, 2010 Order and Report-Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Plaintiff's letter-motion to "substitute" David Rock as a defendant is **DENIED**; and the Court further

ORDERS that Plaintiff's letter-motion to amend his amended complaint to add Lieutenant Sawyer and a "John Doe" Deputy Superintendent is **DENIED**; and the Court further

ORDERS that Plaintiff's amended complaint is *sua sponte* **DISMISSED in its entirety**

¹ In a letter dated September 24, 2010, Plaintiff requested a sixty-day extension to file objections to Magistrate Judge Baxter's Order and Report-Recommendation. *See* Dkt. No. 52. The Court granted that request and extended Plaintiff's time to file objections until November 10, 2010. *See* Text Order dated October 1, 2010. Despite this extension, Plaintiff did not file any objections.

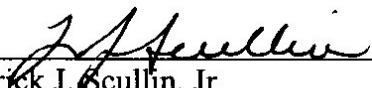
with prejudice for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii); and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Defendant and close this case; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: November 15, 2010
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge